

April 25, 2019

The Honorable Jerrold Nadler  
Chairman, House Judiciary Committee  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Doug Collins  
Ranking Member, House Judiciary Committee  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Lindsey Graham  
Chairman, Senate Judiciary Committee  
United States Senate  
Washington, D.C. 20510

The Honorable Dianne Feinstein  
Ranking Member, Senate Judiciary Committee  
United States Senate  
Washington, D.C. 20510

Dear Chairmen Nadler and Graham and Ranking Members Collins and Feinstein:

On behalf of First Focus Campaign for Children (FFCC), a bipartisan children's advocacy organization dedicated to making children and families a priority in federal budget and policy decisions, I am writing to express strong opposition to H.J.Res. 36 and urge you to soundly reject this proposal by Congressman Jim Banks to radically alter the U.S. Constitution with a "parental rights" amendment.

By definition, parents and families are fundamental to the upbringing, education, and well-being of children. The U.S. Supreme Court has repeatedly upheld parents' rights as fundamental. For instance, in *Troxel vs. Granville*, the Supreme Court concluded "the interest of parents in the care, custody, and control of their children" to be "perhaps the oldest of the fundamental liberty interests recognized by this Court."

The role of parents in the protection and well-being of children is vital and an important part of FFCC's advocacy. In fact, it is why FFCC has supported numerous pieces of legislation that respect and support the critically important role of parents, including the Child Tax Credit, Family First Prevention Services Act, Family and Medical Insurance Leave Act, the Homeless Children and Youth Act, Healthy Families Act, Trauma-Informed Care for Children and Families Act, Family-Based Care Services Act, Preventing Maternal Deaths Act, and other pieces of legislation that encourage parental involvement in schools and in preventing the separation of migrant children from their parents and families, which violates the rights and best interests of both parents and their children.

Tragically, H.J.Res. 36 fails to recognize that both parental and child rights must be supported. By undermining even the most limited current protections for children, H.J.Res. 36 would create greater threats to the safety, health, and well-being of children. Therefore, FFCC strongly opposes Rep. Banks's proposed "parental rights" constitutional amendment.

### **H.J.Res. 36 Would Limit the Protection of Children from Abuse and Neglect**

First, while most parents deserve deference in the upbringing of their children and support to help any parents struggling to fulfill parenting duties, some parents are simply unable to live up to the responsibilities and duties of parenting. Sadly, some parents are violent, criminal, unfit, and a danger to children.

Having the ability to procreate does not give parents the right and authority to treat children as their property. Consequently, in cases where parents commit neglect or physical, emotional, or sexual abuse upon their

children or put children in harm's way, there is a critical role for society to respect the fundamental human rights of children and to step in and protect them from harm.

Unfortunately, the language in H.J.Res. 36, grants parents the "liberty" and constitutional protection to "direct the upbringing, care, and education of their children as a fundamental right" with the only possible exceptions of when there is a government interest of "the highest order" or with "a parental action or decision that would end life."

Abuse and neglect of children can take many forms and the clear evidence shows that the trauma from neglect and physical, emotional, or sexual abuse can be life-long and passed from one generation to the next. Granting constitutional protections to parents to take any actions against children short of "a parental action or decision that would end life" will have tragic consequences, as children will be left in horribly abusive homes and unsafe situations.

In fact, with respect to cases of emotional or sexual abuse, neglect, and physical abuse, there may be no threat of death, but H.J.Res. 36 would make it incredibly difficult, if not nearly impossible, for society to take action to protect children from such harm and abuse.

The language in H.J.Res. 36 raises a number of additional questions and concerns. As examples, would a "parental rights" constitutional amendment allow a parent to force a child to live in a cult where sexual assault and child labor are practiced? Would H.J.Res. 36 vacate child marriage laws in the states and grant parents a constitutional right to require their children to marry against their will?

The potential negative ramifications and the terrible danger that a "parental rights" amendment could have for the safety of children are immense. Short of "a parental action or decision that would end life," almost any parental act would be protected with the sole exception if a government could demonstrate that "its governmental interest as applied to the person is of the highest order. . . ."

Even worse, the fundamental rights or "best interest" of children would not even be considered. H.J.Res. 36 tragically converts the health and well-being of children to be about the rights of parents and government even though there are instances where children need protections from both parents and government.

In fact, H.J.Res. 36 literally guts any countervailing protection or consideration of the fundamental rights, needs, or voice of children. For example, children would lose the footing that advocates and organizations have worked so hard to establish for them in the family court proceedings setting. These courts would no longer consider a child's own wants or needs when determining the "best interests" of that child in situations like custody hearings or adoptions.

### **H.J.Res. 36 Would Undermine Adoptions**

Second, our nation has increasingly recognized the important role that adoption can play in ensuring that children can find safe and loving families. Adoption helps children find families in which to grow and get the support and help they need to reach their full potential. This recognition that parents and loving families can take many forms has had strong bipartisan support for many years.

Unfortunately, H.J.Res. 36 would significantly undermine these efforts by making adoptions much more difficult and tenuous because adoptive placements and permanency could be deemed unconstitutional or endlessly challenged by biological parents in court.

### **H.J.Res. 36 Would Create Chaos and Lawsuits in Public Schools and Harm Students**

Third, while we strongly support parental and community engagement in education through PTAs, advisory committees, and communities in schools, a detrimental consequence of H.J.Res. 36 is that it could potentially result in a flood of litigation initiated by individual parents, at taxpayers' expense, against anyone working with children, including early childhood educators, teachers, librarians, counselors, social workers, and nurses, or between parents with opposing values.

Disgruntled parents could create havoc in schools and communities across the country by demanding changes to curriculum and teaching methods that might then conflict with the desires of other parents with children in the schools and the community. Education decisions and disputes would have to be litigated by the courts as "parental rights" cases rather than by communities and parents within the schools themselves. This would be an outright disaster for our nation's education system and children would be the biggest losers.

### **H.J.Res. 36 Would Threaten the Health of Children**

Fourth, H.J.Res. 36 would open up an array of dangerous possibilities with respect to children's health. For example, there are already measles and mumps outbreaks across this country due to states granting an array of "parental rights" exemptions that grant parents the ability to exempt their children from critically important vaccinations that protect the health of their children and the community at-large, including other children who may have an immunosuppressed medical condition. Under a "parental rights" constitutional amendment, even current mandatory vaccination laws would likely be gutted and the health of children would be threatened.

Another area of federal and state law that could be gutted are those provisions granting "mature minors" to exercise independent decision-making when it comes to giving informed consent or to refuse medical treatment with respect to their own health. These laws include provisions so that adolescents may confide in their physician or other medical providers when seeking medical information regarding sexual health and education, pregnancy, STD prevention, family planning, substance use disorder treatment, mental health and suicide prevention counseling, or even younger children in matters related to physical or sexual abuse by adults.

Some of these laws were passed to address circumstances where parents have made decisions that might be counter to the "best interest" of the child, such as instances when parents have chosen to withhold blood transfusions, cancer treatment, or other medical treatment for religious reasons, or have sought to force the sterilization of children with disabilities.

Finally, federal law and regulations provide for extra precautions and protections related to medical research in children (the "Common Rule"). In such cases, a capable child "must actively show his or her willingness to participate in the research, rather than just complying with directions to participate and not resisting in any way." H.J.Res 36 would threaten all of these current legal protections that promote the "best interest" and voice of children in their own care and treatment.

### **H.J.Res. 36 Undermines Child Rights, Protections, and Voice: It Should Be Rejected**

Parents are the guardians and not the owners of children. Unfortunately, H.J.Res. 36 treats children as purely passive objects of the authority of parents. Children have fundamental rights that would be eliminated by this proposal and deserve more than just to be protected from parental decisions that "would end life." Children deserve better.

In fact, the failure to recognize the rights of children, to respect their voice, or even consider what is in their best interest is so pervasive that kids are not even listened to on issues that exclusively impact them, such as

education, child abuse and neglect, child trafficking, and teenage pregnancy. H.J.Res. 36 embodies this tragic problem and fails children.

The fact is that violence, abuse, injustice, and discrimination against children in families, schools, prisons, and institutions can best be significantly reduced if children's voices are heard and their rights are protected. The consequence of the silencing or dismissal of the voices of children about the harm they experience and their needs has the effect of protecting the abusers, which includes parents, government, and private institutions, rather than the children.

If policymakers are to take actions that impact children, it should be to take action in their "best interest," to protect them from harm, and, at the very least, to do no harm. Unfortunately, H.J.Res. 36 undermines the fundamental rights, protections, and voice of children and would do harm. It should be rejected.

Sincerely,

A handwritten signature in blue ink that reads "Bruce Lesley". The signature is written in a cursive, flowing style.

Bruce Lesley  
President

xc: The Honorable Jim Banks, U.S. House of Representatives  
Cosponsors of H.J.Res. 36  
Cosponsors of S.J.Res. 48 in the 115<sup>th</sup> Congress